

HOUSE BILL NO. 1124

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact sections 26.1-10-01, 26.1-10-04, 26.1-10-05, and
2 26.1-10-07 of the North Dakota Century Code, relating to the standards and management of an
3 insurer with an insurance holding company system and the confidential treatment of
4 investigation and examination records of insurance holding companies.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 26.1-10-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **26.1-10-01. Definitions.**

9 As used in this chapter, unless the context or subject matter otherwise requires:

- 10 1. "Affiliate" means a person that directly, or indirectly through one or more
11 intermediaries, controls, or is under the control of, or is under common control with,
12 the person specified.
- 13 2. "Control" means the possession, direct or indirect, of the power to direct or cause the
14 direction of the management and policies of a person, whether through the ownership
15 of voting securities, by contract other than a commercial contract for goods or
16 nonmanagement services, or otherwise, unless the power is the result of an official
17 position with or corporate office held by the person. Control is presumed to exist if any
18 person, directly or indirectly, owns, controls, holds with the power to vote, or holds
19 proxies representing ten percent or more of the voting securities of any other person.
20 This presumption may be rebutted by a showing made in the manner provided for in
21 subsection 9 of section 26.1-10-04, that control does not exist in fact. The
22 commissioner may determine, after furnishing all persons in interest notice and
23 opportunity to be heard and making specific findings of fact to support such

1 determination, that control exists in fact, notwithstanding the absence of a presumption
2 to that effect.

3 3. "Enterprise risk" means any activity, circumstance, event, or series of events involving
4 one or more affiliates of an insurer which, if not remedied promptly, is likely to have a
5 material adverse effect upon the financial condition or liquidity of the insurer or the
6 insurer's insurance holding company system as a whole including anything that would
7 cause the insurer's risk-based capital to fall into company action level as set forth in
8 section 26.1-03.1-03 or would cause the insurer to be in hazardous financial condition
9 as set forth in North Dakota Administrative Code section 45-03-13-01.

10 4. "Group capital calculation instructions" means the group capital calculation instructions
11 adopted by the national association of insurance commissioners and as amended in
12 accordance with the procedures adopted by the national association of insurance
13 commissioners.

14 5. "Groupwide supervisor" means the regulatory official authorized to engage in
15 conducting and coordinating groupwide supervision activities who is determined or
16 acknowledged by the commissioner under section 26.1-10-06.2 to have sufficient
17 significant contacts with the internationally active insurance group.

18 ~~5-6.~~ "Insurance holding company system" means two or more affiliated persons, one or
19 more of which is an insurer.

20 ~~6-7.~~ "Insurer" has the same definition as provided in section 26.1-29-02, except the term
21 does not include an agency, authority, or instrumentality of the United States or its
22 possessions or a state or political subdivision of a state.

23 ~~7-8.~~ "Internationally active insurance group" means an insurance holding company system
24 that includes an insurer registered under section 26.1-10-04, and meets the following
25 criteria:

26 a. Premiums written in at least three countries;

27 b. The percentage of gross premiums written outside the United States is at least
28 ten percent of the insurance holding company system's total gross written
29 premiums; and

30 c. Based on a three-year rolling average, the total assets of the insurance holding
31 company system are at least fifty billion dollars or the total gross written

1 premiums of the insurance holding company system are at least ten billion
2 dollars.

3 ~~8-9.~~ "Liquidity stress test framework" means the national association of insurance
4 commissioners liquidity stress test framework that includes a history of the
5 association's development of regulatory liquidity stress testing, the scope criteria
6 applicable for a specific data year, the liquidity stress test instructions, and reporting
7 templates for a specific data year, as adopted and amended in accordance with the
8 procedures adopted by the association.

9 10. "Person" means an individual, a corporation, a limited liability company, a partnership,
10 an association, a joint stock company, a trust, or an unincorporated organization or
11 any similar entity or any combination of the foregoing acting in concert. The term does
12 not include any joint venture partnership exclusively engaged in owning, managing,
13 leasing, or developing real or tangible personal property.

14 11. "Scope criteria" means the designated exposure bases along with minimum
15 magnitudes of those bases for the specified data year, used to establish a preliminary
16 list of insurers considered scoped into the national association of insurance
17 commissioners liquidity stress test framework for that data year.

18 ~~9-12.~~ "Securityholder" of a specified person means the owner of any security of the person,
19 including common stock, preferred stock, debt obligations, and any other security
20 convertible into or evidencing the right to acquire any of the foregoing.

21 ~~10-13.~~ "Subsidiary" of a specified person means an affiliate under the control of the person
22 directly, or indirectly through one or more intermediaries.

23 ~~11-14.~~ "Voting security" includes any security convertible into or evidencing a right to acquire
24 a voting security.

25 **SECTION 2. AMENDMENT.** Section 26.1-10-04 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **26.1-10-04. Registration of insurers.**

28 1. Every insurer that is authorized to do business in this state and which is a member of
29 an insurance holding company system shall register with the commissioner, except a
30 foreign insurer subject to registration requirements and standards adopted by statute
31 or rule in the jurisdiction of its domicile which are substantially similar to those

1 contained in this section and section 26.1-10-05. Any insurer subject to registration
2 under this section shall register within fifteen days after it becomes subject to
3 registration, and annually thereafter by March first of each year for the previous
4 calendar year unless the commissioner for good cause shown extends the time for
5 registration, and then within the extended time. The commissioner may require any
6 insurer authorized to do business in the state which is a member of an insurance
7 holding company system not subject to registration under this section to furnish a copy
8 of the registration statement, the summary specified in subsection 10 of section
9 26.1-10-04, or other information filed by the insurer with the insurance regulatory
10 authority of the domiciliary jurisdiction.

- 11 2. Every insurer subject to registration shall file a registration statement with the
12 commissioner on a form approved by the commissioner, which must contain current
13 information about:
- 14 a. The capital structure, general financial condition, ownership, and management of
15 the insurer and any person in control of the insurer.
 - 16 b. The identity and relationship of every member of the insurance holding company
17 system.
 - 18 c. The following agreements in force and transactions currently outstanding or
19 which have occurred during the last calendar year between the insurer and its
20 affiliates:
 - 21 (1) Loans, other investments, or purchases, sales, or exchanges of securities of
22 the affiliates by the insurer or of the insurer by its affiliates.
 - 23 (2) Purchases, sales, or exchange of assets.
 - 24 (3) Transactions not in the ordinary course of business.
 - 25 (4) Guarantees or undertakings for the benefit of an affiliate which result in an
26 actual contingent exposure of the insurer's assets to liability, other than
27 insurance contracts entered into in the ordinary course of the insurer's
28 business.
 - 29 (5) All management agreements, service contracts, and all cost-sharing
30 arrangements.
 - 31 (6) Reinsurance agreements.

- 1 (7) Dividends and other distributions to shareholders.
- 2 (8) Consolidated tax allocation agreements.
- 3 d. Any pledge of the insurer's stock, including stock of any subsidiary or controlling
4 affiliate, for a loan made to any member of the insurance holding company
5 system.
- 6 e. If requested by the commissioner, the insurer shall include financial statements of
7 or within an insurance holding company system, including all affiliates. A financial
8 statement may include an annual audited financial statement filed with the United
9 States securities and exchange commission pursuant to the federal Securities
10 Act of 1933, as amended, [15 U.S.C. 77a et seq.] or the federal Securities
11 Exchange Act of 1934, as amended, [15 U.S.C. 78a et seq.] or the financial
12 statement pursuant to this subdivision may satisfy the request by providing the
13 commissioner with the most recently filed parent corporation financial statements
14 that have been filed with the United States securities and exchange commission.
- 15 f. Other matters concerning transactions between registered insurers and any
16 affiliates as may be included from time to time in any registration forms adopted
17 or approved by the commissioner.
- 18 g. Statements that the insurer's board of directors is responsible for and supervises,
19 relating to corporate governance and internal controls that the insurer's officers or
20 senior management have approved, implemented, and continue to maintain and
21 monitor.
- 22 h. Any other information required by the commissioner by rule.
- 23 3. No information need be disclosed on the registration statement filed pursuant to
24 subsection 2 if the information is not material for the purposes of this section. Unless
25 the commissioner by rule or order provides otherwise, sales, purchases, exchanges,
26 loans or extensions of credit, or investments, or guarantees involving one-half of one
27 percent or less of an insurer's admitted assets as of December thirty-first next
28 preceding are not material for purposes of this section. The definition of materiality
29 provided in this subsection does not apply for purposes of the group capital calculation
30 or the liquidity stress test framework.

- 1 4. In addition to the annual filing requirement under subsection 1, each registered insurer
2 shall keep current the information required to be disclosed in its registration statement
3 by reporting all material changes or additions on amendment forms approved by the
4 commissioner within fifteen days after the end of the month in which it learns of each
5 change or addition; provided, however, that subject to subsections 7, 8, and 9 of
6 section 26.1-10-05, each registered insurer shall report all dividends and other
7 distributions to shareholders within five business days following the declaration and no
8 less than ten business days prior to payment thereof.
- 9 5. The commissioner shall terminate the registration of any insurer that demonstrates it
10 no longer is a member of an insurance holding company system.
- 11 6. The commissioner may require or allow two or more affiliated insurers subject to
12 registration to file a consolidated registration statement.
- 13 7. The commissioner may allow an insurer which is authorized to do business in this
14 state and which is part of an insurance holding company system to register on behalf
15 of any affiliated insurer which is required to register under subsection 1 to file all
16 information and material required to be filed under this section.
- 17 8. This section does not apply to any insurer, information, or transaction if and to the
18 extent excepted by the commissioner by rule or order.
- 19 9. Any person may file with the commissioner a disclaimer of affiliation with any
20 authorized insurer or a disclaimer may be filed by the insurer or any member of an
21 insurance holding company system. The disclaimer must fully disclose all material
22 relationships and bases for affiliation between the person and the insurer as well as
23 the basis for disclaiming the affiliation. A disclaimer of affiliation is deemed to have
24 been granted unless the commissioner, within thirty days following receipt of a
25 complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of
26 disallowance, the disclaiming party may request an administrative hearing, which must
27 be granted. The disclaiming party is relieved of its duty to register under this section if
28 approval of the disclaimer has been granted by the commissioner or if the disclaimer is
29 deemed to have been approved.
- 30 10. All registration statements must contain a summary outlining all items in the current
31 registration statement representing changes from the prior registration statement.

- 1 11. Any person within an insurance holding company system subject to registration must
2 provide complete and accurate information to an insurer, when the information is
3 reasonably necessary to enable the insurer to comply with the provisions of this
4 chapter.
- 5 12. The ultimate controlling person of every insurer subject to registration shall file an
6 annual enterprise risk report. To the best of the ultimate controlling person's
7 knowledge and belief, the report must identify the material risks within the insurance
8 holding company system which could pose enterprise risk to the insurer. The report
9 must be filed with the lead state commissioner of the insurance holding company
10 system as determined by the procedures within the financial analysis handbook
11 adopted by the national association of insurance commissioners.
- 12 13. Except as provided in subsection 14, the ultimate controlling person of each insurer
13 subject to registration shall concurrently file with the registration an annual group
14 capital calculation as directed by the lead state commissioner. The report must be
15 completed in accordance with the national association of insurance commissioners
16 group capital calculation instructions, which may permit the lead state commissioner to
17 allow a controlling person that is not the ultimate controlling person to file the group
18 capital calculation. The report must be filed with the lead state commissioner of the
19 insurance holding company system as determined by the commissioner in accordance
20 with the financial analysis handbook procedures adopted by the national association of
21 insurance commissioners.
- 22 14. An insurance holding company system is exempt from filing the group capital
23 calculation if the insurance holding company system meets any of the criteria
24 described below.
- 25 a. An insurance holding company system that has only one insurer within its holding
26 company structure, only writes business, is only licensed in its domestic state,
27 and assumes no business from any other insurer.
- 28 b. If a system is required to perform a group capital calculation specified by the
29 United States federal reserve board, the lead state commissioner shall request
30 the calculation from the federal reserve board under the terms of information
31 sharing agreements in effect. If the federal reserve board cannot share the

- 1 calculation with the lead state commissioner, the insurance holding company
2 system is not exempt from the group capital calculation filing.
- 3 c. An insurance holding company system that has a non-United States groupwide
4 supervisor located within a reciprocal jurisdiction as set forth in subsection 7 of
5 section 26.1-31.2-01 which recognizes the United States state regulatory
6 approach to group supervision and group capital.
- 7 d. An insurance holding company system that:
- 8 (1) Provides information to the lead state that meets the requirements for
9 accreditation under the national association of insurance commissioners
10 financial standards and accreditation program, either directly or indirectly
11 through the groupwide supervisor, who has determined the information is
12 satisfactory to allow the lead state to comply with the national association of
13 insurance commissioners group supervision approach, as detailed in the
14 national association of insurance commissioners financial analysis
15 handbook; and
- 16 (2) Has a non-United States groupwide supervisor that is not in a reciprocal
17 jurisdiction which recognizes and accepts, as specified by the commissioner
18 by rule, the group capital calculation as the worldwide group capital
19 assessment for United States insurance groups that operate in that
20 jurisdiction.
- 21 e. Notwithstanding subdivisions c and d, a lead state commissioner shall require the
22 group capital calculation for United States operations of any non-United States
23 based insurance holding company system where, after any necessary
24 consultation with other supervisors or officials, it is deemed appropriate by the
25 lead state commissioner for prudential oversight and solvency monitoring
26 purposes or for ensuring the competitiveness of the insurance marketplace.
- 27 f. Notwithstanding subdivisions a through d, the lead state commissioner may
28 exempt the ultimate controlling person from filing the annual group capital
29 calculation or accept a limited group capital filing or report in accordance with
30 criteria as specified by the commissioner by rule.

1 g. If the lead state commissioner determines an insurance holding company system
2 no longer meets one or more of the requirements for an exemption from filing the
3 group capital calculation under this section, the insurance holding company
4 system shall file the group capital calculation at the next annual filing date, unless
5 an extension is provided by the lead state commissioner based on reasonable
6 grounds shown.

7 15. The ultimate controlling person of every insurer subject to registration and scoped into
8 the national association of insurance commissioners liquidity stress test framework
9 shall file the results of a specific year's liquidity stress test. The results must be filed
10 with the lead state insurance commissioner of the insurance holding company system
11 as determined by the financial analysis handbook procedures adopted by the national
12 association of insurance commissioners.

13 a. The national association of insurance commissioners liquidity stress test
14 framework includes scope criteria applicable to a specific data year. The scope
15 criteria are reviewed at least annually by the financial stability task force or its
16 successor. A change to the national association of insurance commissioners
17 liquidity stress test framework or to the data year for which the scope criteria are
18 to be measured is effective on January first of the year following the calendar
19 year when the change is adopted. An insurer that meets at least one threshold of
20 the scope criteria is considered scoped into the national association of insurance
21 commissioners liquidity stress test framework for the specified data year unless
22 the lead state insurance commissioner, in consultation with the national
23 association of insurance commissioners financial stability task force or its
24 successor, determines the insurer should not be scoped into the framework for
25 that data year. An insurer that does not trigger at least one threshold of the scope
26 criteria is considered scoped out of the liquidity stress test framework for the
27 specified data year, unless the lead state insurance commissioner, in consultation
28 with the national association of insurance commissioners financial stability task
29 force or its successor, determines the insurer should be scoped into the
30 framework for that data year.

- 1 **b.** To avoid having insurers scoped in and out of the national association of
2 insurance commissioners liquidity stress test framework on a frequent basis, the
3 lead state insurance commissioner, in consultation with the financial stability task
4 force or its successor, shall assess this concern as part of the determination for
5 an insurer.
- 6 **c.** The performance of, and filing of the results from, a specific year's liquidity stress
7 test must comply with the national association of insurance commissioners
8 liquidity stress test framework's instructions and reporting templates for that year
9 and any lead state insurance commissioner determinations, in consultation with
10 the financial stability task force or its successor, provided within the framework.

11 ~~13-16.~~ The failure to file a registration statement or any summary of the registration statement
12 or enterprise risk filing required by this section within the time specified for the filing is
13 a violation of this section.

14 **SECTION 3. AMENDMENT.** Section 26.1-10-05 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **26.1-10-05. Standards and management of an insurer with an insurance holding**
17 **company system.**

- 18 1. Transactions within an insurance holding company system to which an insurer subject
19 to registration is a party are subject to the following standards:
- 20 a. The terms must be fair and reasonable.
- 21 b. Agreements for cost-sharing services and management must include provisions
22 as required by rules adopted by the commissioner.
- 23 c. The books, accounts, and records of each party must clearly and accurately
24 disclose the precise nature and details of the transactions, including that
25 accounting information that is necessary to support the reasonableness of the
26 charges or fees to the respective parties.
- 27 d. The insurer's surplus as regards to policyholders following any dividends or
28 distributions to shareholder affiliates must be reasonable in relation to the
29 insurer's outstanding liabilities and adequate to its financial needs.
- 30 e. Charges or fees for services performed must be reasonable.

- 1 f. Expenses incurred and payment received must be allocated to the insurer in
2 conformity with statutory accounting practices consistently applied.
- 3 g. If an insurer subject to this chapter is deemed by the commissioner to be in a
4 hazardous financial condition as defined by North Dakota Administrative Code
5 chapter 45-03-13 or a condition that would be grounds for supervision,
6 conservation, or a delinquency proceeding, the commissioner may require the
7 insurer to secure and maintain a deposit, held by the commissioner, or a bond, as
8 determined by the insurer at the insurer's discretion, for the protection of the
9 insurer for the duration of the contracts or agreements, or the existence of the
10 condition for which the commissioner is required to secure and maintain the
11 deposit or the bond. In determining whether a deposit or a bond is required, the
12 commissioner must consider whether concerns exist with respect to the affiliated
13 person's ability to fulfill the contracts or agreements if the insurer were to be put
14 into liquidation. Once the insurer is deemed to be in a hazardous financial
15 condition or a condition that would be grounds for supervision, conservation or a
16 delinquency proceeding, and a deposit or bond is necessary, the commissioner
17 may determine the amount of the deposit or bond, not to exceed the value of the
18 contracts or agreements in any one year, and whether such deposit or bond
19 should be required for a single contract, multiple contracts, or a contract only with
20 specific persons.
- 21 h. All records and data of the insurer held by an affiliate are and remain the property
22 of the insurer, are subject to the control of the insurer, are identifiable, and are
23 segregated or readily capable of segregation, at no additional cost to the insurer,
24 from all other persons' records and data. This includes all records and data that
25 are otherwise the property of the insurer, in whatever form maintained, including
26 claims and claim files, policyholder lists, application files, litigation files, premium
27 records, rate books, underwriting manuals, personnel records, financial records,
28 or similar records within the possession, custody or control of the affiliate. At the
29 request of the insurer, the affiliate shall permit the receiver to obtain a complete
30 set of all records of any type that pertain to the insurer's business, obtain access
31 to the operating systems on which the data is maintained, obtain the software

1 that runs those systems either through assumption of licensing agreements or
2 otherwise, and restrict the use of the data by the affiliate if it is not operating the
3 insurer's business. The affiliate shall provide a waiver of any landlord lien or other
4 encumbrance to give the insurer access to all records and data in the event of
5 the affiliate's default under a lease or other agreement.

6 i. Premiums or other funds belonging to the insurer which are collected by or held
7 by an affiliate are the exclusive property of the insurer and are subject to the
8 control of the insurer. Any right of offset in the event an insurer is placed into
9 receivership shall be subject to chapter 26.1-06.1.

10 2. The following transactions involving a domestic insurer and any person in its insurance
11 holding company system, including an amendment or modification of an affiliate
12 agreement previously filed pursuant to this section, which is subject to any materiality
13 standards contained in subdivisions a through g, may not be entered unless the
14 insurer has notified the commissioner in writing of its intention to enter into the
15 transaction at least thirty days prior thereto, or a shorter period as the commissioner
16 may permit, and the commissioner has not disapproved it within that period. The
17 notice for an amendment or modification must include the reason for the change and
18 the financial impact on the domestic insurer. Within thirty days after a termination of a
19 previously filed agreement, informal notice must be reported to the commissioner for
20 determination of the type of filing required, if any.

21 a. Sales, purchases, exchanges, loans, or extensions of credit, or investments
22 provided the transactions are equal to or exceed:

23 (1) With respect to nonlife insurers, the lesser of three percent of the insurer's
24 admitted assets or twenty-five percent of surplus as regards policyholders
25 as of December thirty-first next preceding.

26 (2) With respect to life insurers, three percent of the insurer's admitted assets
27 as of December thirty-first next preceding.

28 b. Loans or extensions of credit to any person that is not an affiliate, if the insurer
29 makes loans or extensions of credit with the agreement or understanding that the
30 proceeds of the transactions, in whole or in substantial part, are to be used to
31 make loans or extensions of credit to, to purchase assets of, or to make

- 1 investments in any affiliate of the insurer making the loans or extensions of credit
2 provided the transactions are equal to or exceed:
- 3 (1) With respect to nonlife insurers, the lesser of three percent of the insurer's
4 admitted assets or twenty-five percent of surplus as regards policyholders
5 as of December thirty-first next preceding.
- 6 (2) With respect to life insurers, three percent of the insurer's admitted assets
7 as of December thirty-first next preceding.
- 8 c. Reinsurance agreements or modifications thereto, including:
- 9 (1) All reinsurance pooling agreements.
- 10 (2) Agreements in which the reinsurance premium or a change in the insurer's
11 liabilities, or the projected reinsurance premium or a change in the insurer's
12 liabilities in any of the next three years, equals or exceeds five percent of
13 the insurer's surplus as regards policyholders, as of December thirty-first
14 next preceding, including those agreements which may require as
15 consideration the transfer of assets from an insurer to a nonaffiliate, if an
16 agreement or understanding exists between the insurer and nonaffiliate that
17 any portion of such assets will be transferred to one or more affiliates of the
18 insurer.
- 19 d. All management agreements, service contracts, tax allocation agreements,
20 guarantees, and cost-sharing arrangements.
- 21 e. Any guarantee made by a domestic insurer; however, a guarantee that is
22 quantifiable as to amount is not subject to the notice requirements of this
23 subsection unless the guarantee exceeds the lesser of one-half of one percent of
24 the insurer's admitted assets or ten percent of surplus as regards policyholders
25 as of December thirty-first next preceding. Additionally, all guarantees that are not
26 quantifiable as to amount are subject to the notice requirements of this
27 subsection.
- 28 f. Any direct or indirect acquisition or investment in a person that controls the
29 insurer or in an affiliate of the insurer in an amount that, together with its present
30 holdings in such investments, exceeds two and one-half percent of the insurer's
31 surplus to policyholders. A direct or indirect acquisition or investment in a

1 subsidiary acquired pursuant to section 26.1-10-02, or authorized under any
2 other section of this chapter, or in a nonsubsidiary insurance affiliate that is
3 subject to this chapter, is exempt from this requirement.

4 g. Any material transactions, specified by rule, which the commissioner determines
5 may adversely affect the interests of the insurer's policyholders.

6 Nothing in this subsection may be deemed to authorize or permit any transactions
7 which, in the case of an insurer which is not a member of the same insurance holding
8 company system, would be otherwise contrary to law.

9 3. A domestic insurer may not enter transactions that are part of a plan or series of like
10 transactions with persons within the insurance holding company system if the purpose
11 of those separate transactions is to avoid the statutory threshold amount and thus
12 avoid the review that would occur otherwise. If the commissioner determines that the
13 separate transactions were entered over any twelve-month period for that purpose, the
14 commissioner may exercise the commissioner's authority under the penalty sections
15 of this chapter.

16 4. The commissioner, in reviewing transactions pursuant to subsection 2, shall consider
17 whether the transactions comply with the standards set forth in subsection 1 and
18 whether they may adversely affect the interests of the policyholders.

19 5. The commissioner must be notified within thirty days of any investment of the
20 domestic insurer in any one corporation if the total investment in that corporation by
21 the insurance holding company system exceeds ten percent of the corporation's voting
22 securities.

23 6. For purposes of this chapter, in determining whether an insurer's surplus as regards
24 policyholders is reasonable in relation to the insurer's outstanding liabilities and
25 adequate to meet its financial needs, the following factors, among others, must be
26 considered:

27 a. The size of the insurer as measured by its assets, capital and surplus, reserves,
28 premium writings, insurance in force, and other appropriate criteria.

29 b. The extent to which the insurer's business is diversified among the several lines
30 of insurance.

31 c. The number and size of risks insured in each line of business.

- 1 d. The extent of the geographical dispersion of the insurer's insured risks.
- 2 e. The nature and extent of the insurer's reinsurance program.
- 3 f. The quality, diversification, and liquidity of the insurer's investment portfolio.
- 4 g. The recent past and projected future trend in the size of the insurer's investment
- 5 portfolio.
- 6 h. The surplus as regards policyholders maintained by other comparable insurers.
- 7 i. The adequacy of the insurer's reserves.
- 8 j. The quality and liquidity of investments in affiliates. The commissioner may treat
- 9 the investment as a disallowed asset for purposes of determining the adequacy
- 10 of surplus as regards policyholders whenever in the commissioner's judgment the
- 11 investment so warrants.
- 12 7. A domestic insurer may not pay any extraordinary dividend or make any other
- 13 extraordinary distribution to its shareholders until thirty days after the commissioner
- 14 has received notice of the declaration thereof and has not within that period
- 15 disapproved the payment, or until the commissioner has approved the payment within
- 16 the thirty-day period.
- 17 8. For purposes of this section, an extraordinary dividend or distribution includes any
- 18 dividend or distribution of cash or other property, when the fair market value together
- 19 with that of other dividends or distributions made within the preceding twelve months
- 20 exceeds the lesser of:
- 21 a. Ten percent of the insurer's surplus as regards policyholders as of December
- 22 thirty-first next preceding; or
- 23 b. The net gain from operations of the insurer, if the insurer is a life insurer, or the
- 24 net income, if the company is not a life insurer, not including realized capital
- 25 gains, for the twelve-month period ending December thirty-first next preceding,
- 26 but shall not include pro rata distributions of any class of the insurer's own
- 27 securities.
- 28 9. In determining whether a dividend or distribution is extraordinary under subsection 8,
- 29 an insurer other than a life insurer may carry forward net income from the previous two
- 30 calendar years which has not already been paid out as dividends. This carry-forward
- 31 must be computed by taking the net income from the second and third preceding

- 1 calendar years, not including realized capital gains, less dividends paid in the second
2 and immediate preceding calendar years.
- 3 10. Notwithstanding any other provision of law, an insurer may declare an extraordinary
4 dividend or distribution which is conditional upon the commissioner's approval, and the
5 declaration confers no rights upon shareholders until:
- 6 a. The commissioner has approved the payment of the dividend or distribution; or
7 b. The commissioner has not disapproved the payment within the thirty-day period
8 referred to in subsection 7.
- 9 11. An affiliate that is a party to an agreement or contract with a domestic insurer that is
10 subject to subdivision d of subsection 2 shall be subject to the jurisdiction of any
11 supervision, seizure, conservatorship, or receivership proceedings against the insurer
12 and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the
13 insurer appointed under chapters 26.1-06.1 and 26.1-06.2 for the purpose of
14 interpreting, enforcing, and overseeing the affiliate's obligations under the agreement
15 or contract to perform services for the insurer that are:
- 16 a. An integral part of the insurer's operations, such as management, administrative,
17 accounting, data processing, marketing, underwriting, claims handling,
18 investment, or any other similar functions; or
- 19 b. Essential to the insurer's ability to fulfill its obligations under insurance policies.
- 20 12. The commissioner may require that an agreement or contract under subdivision d of
21 subsection 2 for the provision of services in subdivision a and b specify the affiliate
22 consents to the jurisdiction as set forth in subsection 11.

23 **SECTION 4. AMENDMENT.** Section 26.1-10-07 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **26.1-10-07. Confidential treatment.**

- 26 1. Any document, material, or other information in the possession or control of the North
27 Dakota insurance department which is obtained by or disclosed to the commissioner
28 or any other person in the course of an examination or investigation made pursuant to
29 section 26.1-10-06 and all information reported pursuant to subdivisions l and m of
30 subsection 2 of section 26.1-10-03 and sections 26.1-10-04 and 26.1-10-05 is
31 confidential and privileged, not subject to section 44-04-18, not subject to subpoena,

1 and not subject to discovery or admissible in evidence in any private civil action.
2 However, the commissioner may use the document, material, or other information in
3 the furtherance of any regulatory or legal action brought as a part of the
4 commissioner's official duties. The commissioner may not otherwise make the
5 document, material, or other information public without the prior written consent of the
6 insurer to which it pertains unless the commissioner, after giving the insurer and its
7 affiliates that would be affected thereby, notice and opportunity to be heard,
8 determines that the interests of policyholders, shareholders, or the public will be
9 served by the publication thereof, in which event the commissioner may publish all or
10 any part thereof in any manner the commissioner deems appropriate.

11 a. For purposes of the information reported and provided under subsections 13 and
12 14 of section 26.1-10-04, the commissioner shall maintain the confidentiality of
13 the group capital calculation and group capital ratio produced within the
14 calculation and any group capital information received from an insurance holding
15 company supervised by the federal reserve board or any United States
16 groupwide supervisor.

17 b. For purposes of the information reported and provided under subsection 15 of
18 section 26.1-10-04, the commissioner shall maintain the confidentiality of the
19 liquidity stress test results and supporting disclosures and any liquidity stress test
20 information received from an insurance holding company supervised by the
21 federal reserve board and non-United States groupwide supervisors.

22 2. Neither the commissioner nor any person that received any document, material, or
23 other information while acting under the authority of the commissioner or with whom
24 such document, material, or other information is shared under this chapter is permitted
25 or required to testify in any private civil action concerning any confidential document,
26 material, or information subject to subsection 1.

27 3. To assist in the performance of the commissioner's duties:

28 a. If the recipient agrees in writing to maintain the confidentiality and privileged
29 status of the document, material, or other information, and has verified in writing
30 the legal authority to maintain confidentiality, the commissioner may share any
31 document, material, or other information, including the confidential and privileged

1 document, material, or information subject to subsection 1, including proprietary
2 and trade secret documents and materials, with any other state, federal, and
3 international regulatory agency, the national association of insurance
4 commissioners ~~and its affiliates and subsidiaries~~, any third-party consultant
5 designated by the commissioner, and any state, federal, or international law
6 enforcement authority, including members of any supervisory college described in
7 section 26.1-10-06.1;

8 b. Notwithstanding subdivision a, the commissioner may share a confidential and
9 privileged document, material, or information reported under subsection 12 of
10 section 26.1-10-04 only with a commissioner of a state having statutes or
11 regulations substantially similar to subsection 1 and who has agreed in writing
12 not to disclose the information;

13 c. The commissioner may receive any document, material, or information, including
14 any otherwise confidential and privileged document, material, or information,
15 including propriety and trade secret information, from the national association of
16 insurance commissioners and its affiliates and subsidiaries and from any
17 regulatory and law enforcement official of other foreign or domestic jurisdiction,
18 and shall maintain as confidential or privileged any document, material, or
19 information received with notice or the understanding the document, material, or
20 information is confidential or privileged under the laws of the jurisdiction that is
21 the source of the document, material, or information; and

22 d. The commissioner shall enter a written agreement with the national association
23 of insurance commissioners and any third-party consultant designated by the
24 commissioner governing sharing and use of information provided under this
25 chapter consistent with this subsection and which must:

26 (1) Specify procedures and protocols regarding the confidentiality and security
27 of information shared with the national association of insurance
28 commissioners ~~and its affiliates and subsidiaries~~ or any third-party consultant
29 designated by the commissioner under this chapter, including procedures
30 and protocols for sharing by the national association of insurance
31 commissioners with any other state, federal, or international regulator; The

1 written agreement must provide the recipient agrees to maintain the
2 confidentiality and privileged status of the documents, materials, or other
3 information and has verified in writing the legal authority to maintain such
4 confidentiality;

5 (2) Specify ownership of information shared with the national association of
6 insurance commissioners ~~and its affiliates and subsidiaries~~ or a third-party
7 consultant under this chapter remains with the commissioner, and the
8 national association of insurance commissioner's or a third-party
9 consultant's, as designated by the commissioner, use of the information is
10 subject to the direction of the commissioner;

11 (3) Excluding documents, materials, or information reported under
12 subsections 13 and 14 of section 26.1-10-04, prohibit the national
13 association of insurance commissioners or a third-party consultant
14 designated by the commissioner from storing the information shared under
15 this chapter in a permanent database after the underlying analysis is
16 complete;

17 (3)(4) Require prompt notice to be given to an insurer if the insurer's confidential
18 information in the possession of the national association of insurance
19 commissioners or a third-party consultant designated by the commissioner
20 under this chapter is subject to a request or subpoena to the national
21 association of insurance commissioners or a third-party consultant
22 designated by the commissioner for disclosure or production; ~~and~~

23 (4)(5) Require the national association of insurance commissioners ~~and its-~~
24 ~~affiliates and subsidiaries~~ or third-party consultants designated by the
25 commissioner to consent to intervention by an insurer in any judicial or
26 administrative action in which the national association of insurance
27 commissioners ~~and its affiliates and subsidiaries~~ or a third-party consultant
28 designated by the commissioner may be required to disclose confidential
29 information about the insurer shared with the national association of
30 insurance commissioners ~~and its affiliates and subsidiaries~~ or a third-party
31 consultant designated by the commissioner under this chapter; ~~and~~

1 (6) Documents, materials, or information reported under subsection 13 and 14
2 of section 26.1-10-04, in the case of an agreement involving a third-party
3 consultant, provide for notification of the identity of the consultant to the
4 applicable insurer.

5 4. The sharing of information by the commissioner under this chapter does not constitute
6 a delegation of regulatory authority or rulemaking, and the commissioner is solely
7 responsible for the administration, execution, and enforcement of this chapter.

8 5. Waiver of any applicable privilege or claim of confidentiality in any document, material,
9 or information may not occur as a result of disclosure to the commissioner under this
10 section or as a result of sharing as authorized in subsection 3.

11 6. Any document, material, or other information in the possession or control of the
12 national association of insurance commissioners or a third-party consultant designated
13 by the commissioner under this chapter is confidential and privileged, not subject to
14 section 44-04-18, not subject to subpoena, and not subject to discovery or admissible
15 in evidence in any private civil action.

16 7. The group capital calculation and resulting group capital ratio required under
17 subsections 13 and 14 of section 26.1-10-04 and the liquidity stress test along with its
18 results and supporting disclosures required under subsection 15 of section 26.1-10-04,
19 are regulatory tools for assessing group risks and capital adequacy and group liquidity
20 risks, respectively, and are not intended as a means to rank insurers or insurance
21 holding company systems generally.

22 8. Except as otherwise required under this chapter, the making, publishing,
23 disseminating, circulating or placing before the public, or causing directly or indirectly
24 to be made, published, disseminated, circulated or placed before the public in a
25 newspaper, magazine or other publication, or in the form of a notice, circular,
26 pamphlet, letter or poster, or over any radio or television station or any electronic
27 means of communication available to the public, or in any other way as an
28 advertisement, announcement or statement containing a representation or statement
29 that would be misleading is prohibited when made regarding:

30 a. A group capital calculation;

31 b. A group capital ratio;

- 1 c. Liquidity stress test results;
2 d. Supporting disclosures for the liquidity stress test of any insurer or any insurer
3 group; or
4 e. Any component derived in the calculation by any insurer, broker, or other person
5 engaged in any manner in the insurance business.
6 9. Notwithstanding subsection 8, if any written publication contains a materially false
7 statement and the insurer demonstrates to the commissioner with substantial proof the
8 falsity or inappropriateness of the statement, the insurer may publish announcements
9 in a written publication, provided the sole purpose of the announcement is to rebut the
10 materially false statement. For this subsection to apply, the existence of any materially
11 false statement in a written publication must relate to at least one of the following
12 subject areas:
13 a. A group capital calculation;
14 b. A resulting group capital ratio;
15 c. An inappropriate comparison of any amount to an insurer's or insurance group's
16 group capital calculation or resulting group capital ratio;
17 d. A liquidity stress test result;
18 e. Supporting disclosures for the liquidity stress test; or
19 f. An inappropriate comparison of any amount to an insurer's or insurance group's
20 liquidity stress test result or supporting disclosures.